



Paper No. 11

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AUG 19 2002

OFFICE OF PETITIONS

In re Application of
Zura et al.
Application No. 10/036,656
Filed: December 21, 2001
Attorney Docket No. 23555-P011US

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: DECISION ACCORDING
: STATUS UNDER
: 37 CFR 1.47(a)
:

This is a decision on the renewed petition under 37 CFR 1.47(a), filed on July 23, 2002, requesting that 2 inventors be allowed to file the application on behalf of themselves and of the remaining joint-inventors who apparently refuse to join in this application.

The petition is **GRANTED**.

There are 4 joint-inventors named for the invention claimed in this application: Christopher P. Zura ("Zura"), Robert Bennet Stout ("Stout"), Jonathan Robert Guthrie ("Guthrie"), and Chris David Duhon ("Duhon"). The application was filed on December 21, 2001 without an oath or declaration as required by 37 CFR 1.51(b)(2) and as specified in 37 CFR 1.63. A Notice to File Missing Parts of Nonprovisional Application was mailed on February 5, 2002 ("2/5/02 Notice"), giving Applicants an extendable, 2-month non-statutory period within which to submit a proper oath or declaration.

A petition under 47 CFR 1.47(a) was filed on April 2, 2002, stating that Stout had expressly refused to join in the application and Duhon had not responded to the letter sent by counsel for the assignee-of-record for the application, and requesting that Zura and Guthrie be allowed to file the application on behalf of themselves as well as Stout and Duhon. That petition was dismissed on July 2, 2002 because the declaration enclosed therein, though signed by Zura and Guthrie, did not contain any information identifying Stout and Duhon as required by 37 CFR 1.63.

The instant renewed petition encloses a "Declaration for Utility or Design Patent Application (37 CFR 1.63)" that contains information identifying all 4 inventors in accordance with 37 CFR 1.63(a)(2), (3) ("7/23/02 Declaration"), and is signed by Zura and Guthrie. In addition, in a "Supplemental Response to February 5, 2002 Notice to File Missing Parts of Nonprovisional Application" submitted by facsimile on June 5, 2002 ("6/5/02 Supplemental Response"), counsel clarified that a copy of the entire application, including the specification, claims and drawings, had been sent to Stout on March 13, 2002,¹ and that Stout advised counsel by telephone on March 19, 2002 of his refusal to sign the application papers.²

¹ See 6/5/02 Supplemental Response, page 2, 1st full paragraph; 4/2/02 Petition, page 2, lines 16-17.

² 4/2/02 Petition, page 2, lines 20-26.

A copy of the entire application, including the specification, claims and drawings, had also been sent to Duhon on March 13, 2002 at his last known address,³ but apparently no response has been received from him as of July 23, 2002 when the instant renewed petition was filed.⁴

In view of the above, the Office concludes that a *bona fide* attempt has been made to present to Stout and Duhon, for signature, a copy of the entire application including the specification, claims and drawings; and that Stout expressly refused to join in the application, and Duhon refuses to join in by not responding.⁵ The petition is thus granted and the 7/23/02 Declaration is hereby accepted. The application is now complete.⁶

As provided in 37 CFR 1.47(c), the Office will forward notice of the filing of this application to Stout and Duhon at their respective last known addresses provided in the petition:

Robert Stout
11910 Wildspruce Drive
Houston, TX 77072

Christopher Duhon
1555 W. Sam Houston Parkway North
Houston, TX 77043

Notice of the filing of this application will also be published in the *Official Gazette*.

The application file is being returned to the Office of Initial Patent Examination for further processing. Thereafter, it will be forwarded to the appropriate Technology Center for examination in due course.

³ 6/5/02 Supplemental Response, page 2, 1st full paragraph; 4/2/02 Petition, page 2, last 2 lines; page 3, 1st 3 lines.

⁴ See 4/2/02 Petition, page 3, lines 9-11. A copy of the 4/2/02 Petition, including the statements of facts contained therein, is enclosed with the instant renewed petition, thereby representing that the statements of facts remain current as of 7/23/02 when the renewed petition was filed.

⁵ The 4/2/02 Petition, in the last 3 lines of page 3, attributes Duhon's non-response to the 3/13/02 mailing to his being "unlocatable." However, the 2nd full paragraph in page 3 of the Petition also states that someone other than Duhon signed for the 3/13/02 package containing the application papers mailed by counsel. If Duhon permanently relocated elsewhere and cannot be traced, that package would have been returned to the sender. Its signing and acceptance by a 3rd party on behalf of Duhon indicates that either Duhon is still affiliated with that address, or that the person signing for Duhon knew his whereabouts. Therefore, it may be more accurate to characterize Duhon's non-response as his refusal to sign the application papers.

⁶ The petition encloses 2 checks: \$130 as petition fee, and \$720 for a 4-month extension of time for filing the 7/23/02 Declaration as response to the 2/5/02 Notice. The payments have been credited to Deposit Account No. 23-2426, as authorized in the instant petition, for the following reasons: (1) No fee is required for a renewed petition under 37 CFR 1.47(a); (2) Although the Office requested submission of appropriate extension-of-time fees in the 7/2/02 Decision to dismiss the 4/2/02 petition, upon reconsideration, the Office has determined that the 4/2/02 Declaration constitutes a *bona fide* reply to the 2/5/02 Notice, in that, omission of the easily includable identifying information for Stout and Duhon could only be inadvertent.

Telephone inquiries concerning this decision should be directed to Petitions Attorney RC Tang at (703) 308-0763.

A handwritten signature in black ink, appearing to read 'Beverly M. Flanagan', written in a cursive style.

Beverly M. Flanagan
Supervisory Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy



Robert Stout
11910 Wildspruce drive
Houston, TX 77072

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Zura et al.
Application No. 10/036,656
Filed: December 21, 2001
Attorney Docket No. 23555-P011US

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: LETTER
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AUG 1 9 2002

OFFICE OF PETITIONS

Dear Mr. Stout,

You are named as a joint inventor in the above identified United States patent application, filed under the provisions of 35 U.S.C. 116 (United States Code), and 37 CFR 1.47(a) (Rules of Practice for the United States Patent and Trademark Office [USPTO]). Should a patent be granted on the application, you will be designated therein as a joint inventor.

As a named inventor, you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost pursuant to 37 CFR 1.19), or make your position of record in the application. Alternatively, you may do any of the aforementioned through an attorney or agent registered to practice before the USPTO and presenting written authorization from you. If you care to join in the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

Requests for information regarding this application should be directed to the File Information Unit at (703) 308-2733. For information on how to order a copy of the application or a specific paper in the application, contact the Certification Division at (703) 308-9726 or 1-(800) 972-6382 (outside the Washington DC area). Telephone inquiries regarding this letter should be directed to Petitions Attorney RC Tang at (703) 308-0763.

Beverly M. Flanagan
Supervisory Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc: Hugh R. Kress, Esq.
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910 Travis Street
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UNITED STATES PATENT AND TRADEMARK OFFICE

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Dear Mr. Duhon,

You are named as a joint inventor in the above identified United States patent application, filed under the provisions of 35 U.S.C. 116 (United States Code), and 37 CFR 1.47(a) (Rules of Practice for the United States Patent and Trademark Office [USPTO]). Should a patent be granted on the application, you will be designated therein as a joint inventor.

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